

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 06F-BD023-BNK

3 **SECURITY MORTGAGE CORPORATION** **CONSENT ORDER**
4 **AND MICHAEL YANCEY, C.E.O.**
5 3724 North Third Street, Second Floor
6 Phoenix, AZ 85012

7 Respondents.

8 On January 13, 2006, the Arizona Department of Financial Institutions ("Department")
9 issued a Notice of Hearing and Complaint alleging that Respondents had violated Arizona law.
10 Wishing to resolve this matter in lieu of an administrative hearing, and without admitting liability,
11 Respondents do not contest the following Findings of Fact and Conclusions of Law. Respondents
12 consent to the entry of the following Order.

13 **FINDINGS OF FACT**

14 1. Pursuant to Title 6, Chapter 9, Article 2, of the Arizona Revised Statutes, the
15 Superintendent has the authority and duty to regulate all persons engaged in the mortgage banker
16 business and with the enforcement of statutes, rules, and regulations relating to mortgage bankers.

17 2. Respondent Security Mortgage Corporation ("Security Mortgage") is an Arizona
18 corporation authorized to transact business in Arizona as a mortgage banker, license number
19 BK 0905263, within the meaning of A.R.S. §§ 6-941 *et seq.* The nature of Security Mortgage's
20 business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or a
21 mortgage loan secured by Arizona real property, within the meaning of A.R.S. § 6-941(5).

22 3. Respondent Michael Yancey ("Mr. Yancey") is the C.E.O. of Security Mortgage and
23 is authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S.
24 § 6-941(5), as outlined within A.R.S. § 6-943(F).

25 4. Security Mortgage and Mr. Yancey are not exempt from licensure as a mortgage
26 banker with the meaning of A.R.S. §§ 6-942 and 6-941(5).

1 5. Security Mortgage's prior examination, conducted by the Department on or around
2 May 6, 2004, resulted in an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent
3 to Entry of Order No. 04F-BD171-SBD. Security Mortgage agreed to correct all of the violations set
4 forth in the Findings of Facts and in the "Report of Examination" by signing and agreeing to a
5 Consent Order, No. 04F-BD171-SBD, on or around August 31, 2004.

6 6. From September 13, 2005 through September 20, 2005, the Department examined
7 Security Mortgage's business affairs and found that Security Mortgage and Mr. Yancey have:

8 a. failed to direct Respondents' activities, as the responsible individual, in compliance
9 with A.R.S. Title 6, Chapter 9 and other applicable laws and rules;

10 i. Respondents' absence of internal controls, and the inadequacies of any
11 internal review or quality control procedures, resulted in at least ten (10)
12 fraudulent loan transactions facilitated by Security Mortgage's loan officer,
13 Frank Martinez;

14 ii. Respondents have not corrected at least nine (9) prior violations from the May
15 6, 2004 examination; and

16 iii. Respondents have not complied with the Superintendent's August 31, 2004
17 Order to Cease and Desist and Consent to Entry of Order No. 04F-BD171-
18 SBD, Respondents specifically;

19 a. failed to include the license number, as issued on Licensee's principal
20 place of business license, within the text of all regulated advertising or
21 business solicitations;

22 b. failed to conduct the minimum required elements of reasonable
23 employee investigations before hiring employees;

24 c. paid compensation to independent contractors who were acting as
25 mortgage brokers or mortgage bankers, but who were not licensed as
26 such;

- d. failed to maintain originals or clearly legible copies of certain mortgage loan documents within all mortgage loan files;
 - e. failed to first obtain written authorization to fill in blank spaces prior to permitting borrowers to sign loan documents containing blank spaces;
 - f. failed to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 United States Code 1601 through 1666j), the Real Estate Settlement Procedures Act (12 United States Code Section 1601 through 2617), and the regulations promulgated under these acts;
 - g. used an unlawful appraisal disclosure that imposed a 90-day limit upon borrowers to request transfer or return of an appraisal for which they had already paid;
 - h. failed to establish, maintain, and reconcile a trust subsidiary ledger for each borrower that deposited trust funds;
 - i. failed to use, sign or maintain written agreements when accepting advance fees in connection with mortgage loan applications; and
 - j. failed to ensure that the Responsible Individual remained in active management of Respondents' activities at all times, including compliance with all applicable laws and rules and knowledge of the specific business activities of Security Mortgage;
- b. failed to include the issued license name and license number, as issued on the principal place of business license, within all regulated advertising and business solicitations;
- i. an advertising brochure "The Whitlow Group" contained an unlicensed name;
 - ii. an advertising brochure contained the incorrect mortgage banker license number; and

- 1 iii. two (2) websites contained the incorrect mortgage banker license number;
- 2 c. failed to conduct the minimum required elements of reasonable employee
- 3 investigations before hiring at least forty one (41) employees;
- 4 i. failed to obtain credit reports before hiring thirty eight (38) employees;
- 5 ii. failed to inquire regarding the applicant's qualifications and
- 6 competence for the position when hiring forty one (41) employees;
- 7 iii. failed to obtain a completed employment eligibility verification form
- 8 "I-9" when hiring fourteen (14) employees;
- 9 iv. failed to investigate further as to the applicant's honesty, truthfulness,
- 10 integrity, or competence when hiring nine (9) employees, all of which
- 11 had derogatory credit ratings;
- 12 v. failed to properly document prior employer inquiries when hiring forty
- 13 one (41) employees; and
- 14 vi. failed to correct these violations from a prior examination;
- 15 d. failed to comply with the Superintendent's August 31, 2004 Order;
- 16 e. failed to observe generally accepted accounting principles and practices;
- 17 i. Respondents accepted the following funds (advance fees) for swimming pool
- 18 construction holdbacks without placing these funds into a trust account:
- 19 a. February 14, 2005—\$42,165.00 FBO Richard DeMauro
- 20 payable to Paddock Pools;
- 21 b. March 2, 2005—\$32,773.50 FBO Richard Musicant payable to
- 22 Whitewater Pools;
- 23 c. March 8, 2005—\$38,279.00 FBO Patrick Wilson payable to
- 24 Whitewater Pools;
- 25 d. March 21, 2005—\$24,859.50 FBO Gil Patrick payable to
- 26 Whitewater Pools;

- e. March 24, 2005—\$23,581.00 FBO Todd Mayor payable to Whitewater Pools;
- f. March 25, 2005—\$27,500.00 FBO Mark Jones payable to Whitewater Pools; and
- g. June 21, 2005—\$22,744.42 FBO Patricia Anderson/James Furr payable to Cayman Pools;
- ii. Respondents posted these funds in 2004 to an income account in the general ledger, which resulted in an overstatement of 2004's actual income; and
- iii. Respondents posted these holdback checks paid out to pool builders as a 2005 expense, which results in overstating 2005's expenses;
- f. failed to use a statutorily correct written fee agreement signed by all parties when accepting advance fees in connection with mortgage loan applications;
- g. misused and disbursed trust funds in excess of funds collected for advances and fees;
 - i. Respondents' June 30, 2005 reconciliation for the Bank One trust account shows outstanding checks written in excess of amounts deposited;
 - ii. the trust bank account was accessed a monthly service charge and was not immediately replenished; and
 - iii. failed to correct this violation from a prior examination;
- h. commingled trust funds;
 - i. Respondents accepted third party holdback funds that were to be held until the construction of the borrowers' pools were verified as completed; and
 - ii. Respondents deposited these funds into a corporate account, commingling monies held for the borrowers' benefit with Respondents' monies;
- i. failed to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601-1666), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617), and the regulations promulgated under these acts;

- 1 i. servicing transfer disclosures were missing or incomplete in five (5) loan files;
2 ii. initial Truth in Lending (TIL) disclosures were missing or incomplete in eight
3 (8) loan files;
4 iii. Good Faith Estimates (GFEs) were missing or incomplete in two (2) loan
5 files; and
6 iv. failed to correct this violation from a prior examination;
7 j. permitted twenty (21) borrowers to sign regulated documents containing blank spaces
8 without first obtaining the proper written authorization from the borrowers to complete the blank
9 spaces;
10 k. paid compensation to an independent contractor who was acting as a mortgage broker
11 or mortgage banker, but who was not licensed as such in Arizona;
12 i. on March 25, 2005, Respondents issued a \$6,501.18 "consulting fee" check
13 payable to "co-broker" The Gretna Group who is not licensed in Arizona as a
14 mortgage broker or mortgage banker; and
15 ii. failed to correct this violation from a prior examination;
16 l. failed to account for the borrower's monies;
17 i. on January 19, 2005, Respondents issued a \$1,600.75 check to Del Webb
18 Mortgage, L.L.C. for co-brokering Gary Davies' loan. These origination fees
19 and/or other collected loan fees were not disclosed to the borrower on the
20 HUD-1 Settlement Statement;
21 ii. Respondents did not give escrow instructions to Sun Title Agency Company
22 to disburse funds for origination fees and/or other loan fees directly to Del
23 Webb Mortgage, L.L.C.; and
24 iii. Respondents failed to maintain subsidiary ledgers for advances and/or fees
25 belonging to the borrower;
26 ...

1 m. failed to establish and maintain a sequential listing of checks written for each bank
2 account;

3 i. Respondents' cash disbursement journal contains no provision for the
4 payment's purpose, including identification or a related loan, if any;

5 n. failed to establish, maintain, and reconcile a trust subsidiary ledger for each borrower
6 that deposited trust funds;

7 i. failed to correct this violation from a prior examination;

8 o. failed to immediately deposit advances or fees into a trust account;

9 i. Respondents have not established or maintained any bank account subsidiary
10 trust records for advances or fees and were unable to verify if the trust funds
11 were immediately deposited into a trust account;

12 p. used an unlawful appraisal disclosure that imposes a 90-day limit upon borrowers to
13 request transfer or return of an appraisal for which they had already paid;

14 i. failed to correct this violation from a prior examination;

15 q. made misrepresentations or concealed an essential or material fact in the course of the
16 mortgage banker business. Security Mortgage's loan officer Frank Martinez was involved in the
17 following ten (10) transactions that occurred between July of 2003 and November of 2004.
18 Doris Kallan was Frank Martinez's loan processor. Her signature appears on, among other
19 things, the employment and tenant verification on the following loans, but she denies signing the
20 verifications, and alleges that these signatures were produced by the hand of Frank Martinez.
21 The following ten (10) loan transactions also resulted in approximately \$94,383.00 in
22 misappropriated proceeds going to, real estate agent, Carmen Cantu and his wife, real estate
23 broker, Betty Barbee. Carmen Cantu and Betty Barbee received these disbursements at the
24 closing of each loan transaction facilitated by Frank Martinez. Respondents ultimately funded
25 and sold on the secondary market the following loans:
26 ...

- 1 i. **Arthur Morales (borrower):** loan funded on or about November 25, 2003 in
2 the amount of \$112,000.00; fees collected by Security Mortgage: \$5,888.02.
3 Arthur Morales is the borrower and the eleven-year-old son of the escrow
4 officer, Victoria Cervantes, who handled this transaction. Morales' social
5 security number is listed in the loan file, which contains fictitious employment
6 and tenant information. Mary Salas (seller) never entered into a loan
7 transaction, never contracted to sell her home, and did not know that her home
8 was sold. Betty Barbee, the real estate broker, received a \$31,183.50
9 disbursement at closing. Ms. Salas was subsequently evicted from her home
10 in April 2005 when Arthur Morales defaulted on the fraudulent loan
11 transaction;
- 12 ii. **Melissa Hunt (borrower):** loan funded on or about August 11, 2003 in the
13 amount of \$124,500.00; fees collected by Security Mortgage: \$4,181.25.
14 Melissa Hunt is the borrower and minor child of Maria Chayra, who is the
15 seller of the property. The loan obtained through Security Mortgage was used
16 to finance the purchase. The loan file contains alleged fictitious employment
17 and credit information. Ms. Chayra did not know her home was sold to her
18 minor daughter. Mortgage payments are in arrears and foreclosure
19 proceedings are possible;
- 20 iii. **Anthony Halaka (borrower):** loan funded on or about September 16, 2003
21 in the amount of \$135,000.00; fees collected by Security Mortgage:
22 \$8,182.50. Anthony Halaka is the minor son of Albert Halaka who is the
23 seller of the property. The loan obtained through Security Mortgage was used
24 to finance the purchase. The loan file contains alleged fictitious employment
25 and credit information;
- 26 ...

- 1 iv. **John Pulini (borrower):** loan funded on or about January 23, 2004 in the
2 amount of \$128,000.00; fees collected by Security Mortgage: \$6,087.93.
3 John Pulini is disabled and unemployed due to an accident he had in
4 California. The loan file contains alleged fictitious employment and credit
5 information;
- 6 v. **Isabel Flores (borrower):** loan funded on or about July 24, 2003 in the
7 amount of \$123,000.00; fees collected by Security Mortgage: \$4,536.25.
8 Isabel Flores is a minor child. The loan file contains alleged fictitious
9 employment and credit information;
- 10 vi. **Saul Lerma (borrower):** loan funded on or about May 4, 2004 in the amount
11 of \$246,000.00; fees collected by Security Mortgage: \$13,455.84. Saul
12 Lerma is a minor child. The loan file contains alleged fictitious employment
13 and credit information;
- 14 vii. **Elizabeth Bahena (borrower):** loan funded on or about December 8, 2004 in
15 the amount of \$175,000.00; fees collected by Security Mortgage: \$9,362.12.
16 The loan file contains alleged fictitious employment and credit information;
- 17 viii. **Jazmin Moreno (borrower):** loan funded on or about February 27, 2004 in
18 the amount of \$157,000.00; fees collected by Security Mortgage: \$8,811.06.
19 Jazmin Moreno is a minor child. The loan file contains alleged fictitious
20 employment and credit information;
- 21 ix. **Ana Palafox (borrower):** loan funded on or about October 10, 2003 in the
22 amount of \$142,000.00; fees collected by Security Mortgage: \$3,387.48. Ana
23 Palafox is a minor child. The loan file contains alleged fictitious employment
24 and credit information; and
- 25 x. **Miguel Estrada (borrower):** loan funded on or about October 3, 2003 in the
26 amount of \$78,000.00; fees collected by Security Mortgage: \$5,056.31. Juan

1 Estrada used his cousin Miguel Estrada's Social Security number for a real
2 estate investment. A home was purchased in Miguel Estrada's name and
3 financing for the home was approved and funded by Security Mortgage.
4 Miguel Estrada claims that he never signed any purchase or loan documents.
5 In August of 2004, Juan Estrada received a \$33,187.00 disbursement from the
6 sale of this property. Miguel Estrada's credit is damaged due to delinquent
7 mortgage payments and he was apparently deprived of more than \$33,000.00
8 in equity from the sale of property in his name. The loan file contains
9 alleged fictitious employment and credit information.

10 7. The Department has found no evidence that Respondents' violations were willful or
11 intentional.

12 8. Respondents have voluntarily agreed to take corrective action and have attempted to
13 comply with the Department's requests. However, such finding does not waive any provisions of
14 this Consent Order.

15 CONCLUSIONS OF LAW

16 1. By the conduct set forth in the Complaint, Respondents have violated statutes and
17 rules governing mortgage bankers as follows:

18 a. A.R.S. § 6-943(F) and A.A.C. R20-4-102 by failing to direct Respondents'
19 activities, as the responsible individual, in compliance with A.R.S. Title 6, Chapter 9 and
20 other applicable laws and rules;

21 b. A.R.S. §§ 6-943(N) and 6-946(E) by failing to include the issued license name
22 and license number as issued on the principal place of business license within all regulated
23 advertising and business solicitations;

24 c. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum
25 required elements of reasonable employee investigations before hiring employees;

26 d. A.R.S. § 6-946(B) and A.A.C. R20-4-102 by failing to observe generally

1 accepted accounting principles and practices;

2 e. A.R.S. § 6-946(C) by failing to use a statutorily correct written fee agreement
3 signed by all parties when accepting advance fees in connection with mortgage loan
4 applications;

5 f. A.R.S. § 6-946(C) by misusing and disbursing trust funds in excess of funds
6 collected for advances and fees;

7 g. A.R.S. § 6-946(C) by commingling trust funds;

8 h. A.R.S. § 6-946(E) by failing to comply with the disclosure requirements of
9 Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601-1666), the Real Estate
10 Settlement Procedures Act (12 U.S.C. §§ 2601-2617), and the regulations promulgated under
11 these acts;

12 i. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by permitting borrowers to sign
13 regulated documents containing blank spaces without first obtaining the proper written
14 authorization from the borrowers to complete the blank spaces;

15 j. A.R.S. § 6-947(B) by paying compensation to an independent contractor who
16 was acting as a mortgage broker or mortgage banker, but who was not licensed as such in
17 Arizona;

18 k. A.R.S. § 6-947(M) by failing to account for the borrower's monies or failing to
19 disburse monies in accordance to the agreement;

20 l. A.A.C. R20-4-1806(B)(3) by failing to establish and maintain a sequential
21 listing of checks written for each bank account;

22 m. A.A.C. R20-4-1806(B)(5) and A.A.C. R20-4-1806(C) by failing to establish,
23 maintain, and reconcile a trust subsidiary ledger for each borrower that deposited trust funds
24 and failed;

25 n. A.R.S. § 6-946(C) by failing to immediately deposit advances or fees into a
26 trust account;

o. A.R.S. § 6-946(C) by using an unlawful appraisal disclosure that imposes a 90-day limit upon borrowers to request transfer or return of an appraisal for which they had already paid; and

p. A.R.S. § 6-947(L) by making misrepresentations or concealing an essential or material fact in the course of the mortgage banker business.

2. The violations of applicable laws, set forth above, constitute grounds for the Superintendent to suspend or revoke Security Mortgage's and Mr. Yancey's mortgage banker license, number BK 0905263, pursuant to A.R.S. § 6-945(A).

3. Respondents failure to comply with Consent Order No. 04F-BD171-SBD is grounds for license denial, suspension, or revocation pursuant to A.R.S. § 6-945(A)(7).

4. The violations, set forth above, constitute grounds for the pursuit of any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

5. The violations of applicable laws set forth above constitute grounds for imposition of a civil money penalty of up to five thousand dollars (\$5,000.00) per day for each violation pursuant to A.R.S. § 6-132.

ORDER

1. Security Mortgage and Mr. Yancey shall immediately correct all violations set forth in the Findings of Fact and in the Report of Examination. Security Mortgage and Mr. Yancey:

a. shall ensure that the responsible individual directs Respondents' activities in compliance with A.R.S. Title 6, Chapter 9 and other applicable laws and rules;

b. shall include the issued license name and license number as issued on the principal place of business license within all regulated advertising and business solicitations;

c. shall conduct the minimum required elements of reasonable employee investigations before hiring employees;

d. shall observe generally accepted accounting principles and practices;

1 e. shall use a statutorily correct written fee agreement signed by all parties when
2 accepting advance fees in connection with mortgage loan applications;

3 f. shall not misuse and disburse trust funds in excess of funds collected for advances
4 and fees;

5 g. shall not commingle trust funds;

6 h. shall comply with the disclosure requirements of Title I of the Consumer Credit
7 Protection Act (15 U.S.C. §§ 1601-1666), the Real Estate Settlement Procedures Act (12
8 U.S.C. §§ 2601-2617), and the regulations promulgated under these acts;

9 i. shall not permit borrowers to sign regulated documents containing blank spaces
10 without first obtaining the proper written authorization from the borrowers to complete the
11 blank spaces;

12 j. shall not pay compensation to independent contractors who are acting as a mortgage
13 broker or mortgage banker, but who are not licensed as such in Arizona;

14 k. shall account for the borrowers' monies and disburse monies in accordance with
15 agreements;

16 l. shall establish and maintain a sequential listing of checks written for each bank
17 account;

18 m. shall establish, maintain, and reconcile a trust subsidiary ledger for each borrower that
19 deposits trust funds;

20 n. shall immediately deposit advances or fees into a trust account;

21 o. shall not use an unlawful appraisal disclosure that imposes a 90-day limit upon
22 borrowers to request transfer or return of an appraisal for which they had already paid; and

23 p. shall not make misrepresentations or conceal an essential or material fact in the
24 course of the mortgage banker business.

25 2. Security Mortgage and Mr. Yancey shall pay to the Department a civil money penalty
26 in the total amount of seventy-five thousand dollars (\$75,000.00). Security Mortgage and Mr.

1 Yancey are jointly and severally liable for payment of the civil money penalty. The Respondents
2 shall pay the civil money penalty to the Department according to the following schedule:

- 3 a. Twenty thousand dollars (\$20,000.00) due on March 15, 2006;
- 4 b. Twenty thousand dollars (\$20,000.00) due on April 15, 2006;
- 5 c. Twenty thousand dollars (\$20,000.00) due on May 15, 2006; and
- 6 d. Fifteen thousand dollars (\$15,000.00) due on June 15, 2006.

7 4. The provisions of this Order shall be binding upon Respondents, their employees,
8 agents and other persons participating in the conduct of the affairs of Respondents.

9 5. This Order shall become effective upon service, and shall remain effective and
10 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
11 or set aside.

12 SO ORDERED this 27th day of March, 2006.

13 
14 Felecia A. Rotellini
15 Superintendent of Financial Institutions
16

17 **CONSENT TO ENTRY OF ORDER**

18 1. Respondents acknowledge that they have been served with a copy of the foregoing
19 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
20 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

21 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of
22 the foregoing Findings of Fact, Conclusions of Law, and Order.

23 3. Respondents state that no promise of any kind or nature has been made to induce
24 them to consent to the entry of this Order, and that they have done so voluntarily.


25 4. Respondents acknowledge that the acceptance of this Agreement by the
26 Superintendent is solely to settle this matter and does not preclude this Department, any other agency

1 or officer of this state or subdivision thereof from instituting other proceedings as may be
2 appropriate now or in the future.

3 5. Michael Yancey, signing on behalf of Security Mortgage Corporation and himself,
4 represents that he is the C.E.O. and as such, has been authorized by Security Mortgage Corporation
5 to consent to the entry of this Order on its behalf.

6 6. Respondents waive all rights to seek judicial review or otherwise to challenge or
7 contest the validity of the Notice of Hearing.

8 DATED this 23rd day of March, 2006.

9
10 By:  CEO
11 Michael Yancey, C.E.O.
Security Mortgage Corporation
12

13 ORIGINAL of the foregoing filed this 28th
14 day of March, 2006, in the office of:

15 Felecia A. Rotellini
16 Superintendent of Financial Institutions
17 Arizona Department of Financial Institutions
18 ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

19 COPY mailed same date to:

20 Daniel Martin
21 Administrative Law Judge
22 Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

23 Craig A. Raby
24 Assistant Attorney General
25 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007
26

1 Robert D. Charlton, Assistant Superintendent
Judith R. Moss, Examiner in Charge
2 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
3 Phoenix, AZ 85018

4 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

5 Security Mortgage Corporation
6 Michael Yancey, C.E.O.
3724 North Third Street, Second Floor
7 Phoenix, AZ 85012
Respondents

8 

9 947464;CPA06-019